

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**STIPULATION OF SETTLEMENT AND DISMISSAL**

On May 11, 2012, the Court entered an order dismissing this Freedom of Information Act (FOIA) action with prejudice because Plaintiff, Eduardo M. Benavides, had “obtained the relief sought in the case.” In that order, the Court noted that “the issue of attorney fees remains outstanding.” The purpose of this Stipulation of Settlement and Dismissal is to resolve that remaining issue and to make clear that the case has been fully resolved.

Plaintiff and Defendant, the Federal Bureau of Prisons (BOP), by and through the United States Attorney for the District of Columbia, hereby agree and stipulate that the above-captioned civil action shall be settled and dismissed on the following terms:

1. Settlement Payment. Defendant shall pay Plaintiff the total sum of \$12,500 (twelve thousand five hundred dollars). This payment shall be made by a check drawn on the account of the United States, made payable to the Institute for Public Representation. Counsel for Defendant agrees that, upon notification of the Court ordering this Stipulation, Defendant will promptly cause the documentation necessary to effectuate this payment to be completed and transmitted. Payment shall be made as promptly as practicable, consistent with the normal

processing procedures followed by the Department of Justice and the Department of the Treasury, following the dismissal of the above-captioned civil action. Plaintiff's counsel shall co-operate with Defendant to ensure that all documentation required to process this payment is complete and accurate. This payment is inclusive of Plaintiff's attorney's fees, costs, and other litigation expenses, and Defendant shall have no further liability for those fees, costs, and expenses. Plaintiff's counsel shall be responsible for the distribution of the payment among themselves.

2. Dismissal with Prejudice. Defendant's counsel may file the fully executed Stipulation with the Court promptly after the date on which the Stipulation is signed by both Plaintiff and Defendant, and such filing shall constitute a dismissal of the above-captioned civil action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), except that the Court shall retain jurisdiction to enforce the terms of this Stipulation. Promptly after the dismissal of the above-captioned civil action, Plaintiff shall dismiss any pending administrative complaints regarding Plaintiff's FOIA request in this case, with prejudice.

3. Release. This Stipulation provides for the full and complete satisfaction of all claims which have been or could have been asserted by Plaintiff in the above-captioned civil action and any pending administrative complaints regarding Plaintiff's FOIA request in this case.

4. No Assignment. Plaintiff represents and warrants that he is the sole lawful owner of all the rights and claims which it has settled and released herein, and that it has not transferred or assigned any of those rights and claims or any interest therein. Plaintiff shall indemnify, hold harmless, and defend the Defendant, the Agency, and the United States, its agencies and officials, and its present and former employees and agents, in their official and individual capacities, from and against any transferred, assigned, or subrogated interests in those rights and claims.

5. No Admission of Liability. This Stipulation has been entered into by Plaintiff and Defendant solely for the purposes of compromising disputed claims without protracted legal proceedings and avoiding the expense and risk of such litigation. Therefore, this Stipulation is not intended and shall not be deemed an admission by either party of the merit or lack of merit of the opposing party's claims and defenses. Without limiting the generality of the foregoing, this Stipulation does not constitute, and shall not be construed as, an admission that Defendant, the Agency, or any of the Agency's present or former employees or agents violated any of Plaintiff's rights or any laws or regulations, or as an admission of any contested fact alleged by Plaintiff in connection with this case or otherwise. This Stipulation may not be used as evidence or otherwise in any civil or administrative action or proceeding against Defendant, the Agency, or the United States or any of its agencies or officials or present or former employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce the terms hereof.

6. Tax Consequences. Plaintiff acknowledges that it has not relied on any representations by Defendant or Defendant's employees or agents as to the tax consequences of this Stipulation or any payments made by or on behalf of Defendant hereunder. Plaintiff shall be solely responsible for compliance with all federal, state, and local tax filing requirements and other obligations arising from this Stipulation, if any, that are applicable to Plaintiff.

7. Entire Agreement. This Stipulation contains the entire agreement between the parties hereto and supersedes all previous agreements, whether written or oral, between the parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection

herewith.

8. Amendments. The terms of this Stipulation may not be modified or amended, and no provision hereof shall be deemed waived, except by a written instrument signed by the party to be charged with the modification, amendment, or waiver.

9. Construction. The parties acknowledge that the preparation of this Stipulation was collaborative in nature, and so agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this Stipulation or any term or provision hereof.

10. Headings. The paragraph headings in this Stipulation have been inserted for convenience of reference only, and shall not limit the scope or otherwise affect the interpretation of any term or provision hereof.

11. Severability. The provisions of this Stipulation are severable, and any invalidity or unenforceability of any one or more of its provisions shall not cause the entire agreement to fail or affect the validity or enforceability of the other provisions herein, which shall be enforced without the severed provision(s) in accordance with the remaining provisions of this Stipulation.

12. Further Assurances. Each party agrees to take such actions and to execute such additional documents as may be necessary or appropriate to fully effectuate and implement the terms of this Stipulation.

13. Right to Cure. If either Plaintiff or Defendant at any time believes that the other party is in breach of this Stipulation, that party shall notify the other party of the alleged breach. The other party shall then have thirty (30) days to cure the breach or otherwise respond to the claim. The parties shall make a good faith effort to resolve any dispute arising from or

regarding this Stipulation before bringing the dispute to the Court's attention.

14. Notices. Any notice required or permitted to be given pursuant to this Stipulation shall be in writing and shall be delivered by hand, or transmitted by fax or by e-mail, addressed as follows or as each party may subsequently specify by written notice to the other:

If to Plaintiff: Brian Wolfman  
Georgetown University Law Center  
Institute for Public Representation  
600 New Jersey Avenue, NW  
Washington, DC 20001  
202-661-6582  
wolfmanb@law.georgetown.edu

If to Defendant: Michael D. Frazier  
Deputy Regional Counsel  
U.S. Department of Justice  
Federal Bureau of Prisons  
South Central Regional Office  
214-224-3411  
mfrazier@bop.gov

with copy to: J. Gregory Lennon  
Special Assistant United States Attorney  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
(202) 514-8780 (fax)  
greg.lennon@usdoj.gov

15. Execution. This Stipulation may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

16. Governing Law. This Stipulation shall be governed by the laws of the District of Columbia, without regard to the choice of law rules utilized in that jurisdiction, and by the laws of the United States.

17. Binding Effect. Upon execution of this Stipulation by all parties hereto, this Stipulation shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, administrators, successors, and assigns. Each signatory to this Stipulation represents and warrants that he or she is fully authorized to enter into this Stipulation.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Stipulation on the dates shown below.

  
BRIAN WOLFMAN  
Georgetown University Law Center  
Institute for Public Representation  
600 New Jersey Avenue, NW  
Washington, D.C. 20001  
202-661-6582

Plaintiff's Counsel

Date: 6/29/2012

RONALD C. MACHEN JR.  
D.C. BAR #447889  
Acting United States Attorney

DANIEL F. VAN HORN  
D.C. Bar # 924092  
Acting Chief, Civil Division

By:   
J. GREGORY LENNON  
Special Assistant United States Attorney  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
(202) 353-4024  
greg.lennon@usdoj.gov

Defendant's Counsel

Date: 6/29/2012

It is SO ORDERED this 2nd day of July, 2012.

/s/ James E. Boasberg

United States District Judge